



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2015-0600: FRL -9934-07-Region 10]

Approval and Promulgation of Implementation Plans; Washington: Additional Regulations for the Benton Clean Air Agency Jurisdiction

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Washington State Implementation Plan (SIP) that were submitted by the Department of Ecology (Ecology) in coordination with Benton Clean Air Agency (BCAA) on August 25, 2015. In the fall of 2014 and spring of 2015, the EPA approved numerous revisions to Ecology's general air quality regulations. However, our approval of the updated Ecology regulations applied only to geographic areas where Ecology, and not a local air authority, has jurisdiction, and statewide to source categories over which Ecology has sole jurisdiction. Under the Washington Clean Air Act local clean air agencies, such as BCAA, have the option of adopting equally stringent or more stringent standards or requirements in lieu of Ecology's general air quality regulations, if they so choose. Therefore, the EPA stated that we would evaluate the general air quality regulations as they apply to local jurisdictions in separate, future actions. If finalized, this proposed action would allow BCAA to rely primarily on Ecology's general air quality regulations for sources within BCAA's jurisdiction, including implementation of the

minor new source review and nonattainment new source review permitting programs. This action also proposes approval of a small set of BCAA regulatory provisions that replace or supplement parts of Ecology's general air quality regulations.

DATES: Comments must be received on or before **[insert date 30 days from date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R10-OAR-2015-0600, by any of the following methods:

- A. www.regulations.gov: Follow the on-line instructions for submitting comments.
- B. Mail: Jeff Hunt, EPA Region 10, Office of Air, Waste and Toxics (AWT-150), 1200 Sixth Avenue, Suite 900, Seattle WA, 98101
- C. E-mail: R10-Public_Comments@epa.gov
- D. Hand Delivery: EPA Region 10 Mailroom, 9th Floor, 1200 Sixth Avenue, Suite 900, Seattle WA, 98101. Attention: Jeff Hunt, Office of Air, Waste and Toxics, AWT - 150. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information

Instructions: Direct your comments to Docket ID No. EPA-R10-OAR-2015-0600. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you

provide it in the body of your comment. If you send an e-mail comment directly to the EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle WA, 98101.

FOR FURTHER INFORMATION CONTACT: Jeff Hunt at (206) 553-0256,

hunt.jeff@epa.gov, or by using the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: Throughout this document wherever “we”, “us” or “our” are used, it is intended to refer to the EPA.

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I. Background for Proposed Action

On January 27, 2014, Ecology submitted revisions to update the general air quality regulations contained in Chapter 173-400 of the Washington Administrative Code (WAC) that apply to sources under Ecology's direct jurisdiction. On October 3, 2014 (79 FR 59653), November 7, 2014 (79 FR 66291), and April 29, 2015 (80 FR 23721), the EPA approved updates to Chapter 173-400 WAC as they apply to geographic areas and source categories under Ecology's direct jurisdiction. Under the EPA-approved provisions of WAC 173-400-020, local clean air agencies have the authority to adopt equally stringent or more stringent standards or requirements in lieu of the provisions of Chapter 173-400 WAC. Local clean air agencies also have the option to rely on parts of Chapter 173-400 WAC, but substitute local standards or requirements for other corresponding provisions. For this reason, the EPA stated that we would address the applicability of Chapter 173-400 WAC in local clean air agency jurisdictions on a case-by-case basis in separate, future actions.

II. Washington SIP Revisions

On August 25, 2015, the Director of the Washington Department of Ecology, as the Governor's designee for SIP revisions, submitted a request to update the general air quality regulations as they apply to the jurisdiction of BCAA. See 40 CFR 52.2470(c) – Table 4. As shown in *Attachment 1* of the SIP revision, included in the docket for this action, BCAA relies primarily on the recently updated provisions of Chapter 173-400 WAC for sources within their jurisdiction in Benton County, including minor new source review permitting and major source

nonattainment new source review (if necessary at some point in the future). *Attachment 2* of the SIP revision contains a small set of BCAA regulations that either supplement or substitute for provisions of Chapter 173-400 WAC that address regulatory authority, definitions of specific terms, and fugitive emissions. These provisions fall in two categories. The first category includes BCAA Regulation 1, sections: 1.01, *Name of Agency*; 2.01, *Powers and Duties of the Benton Clean Air Agency (BCAA)*; 2.03, *Powers and Duties of the Board of Directors*; 2.05, *Severability*; and 2.06, *Confidentiality*. These provisions are generally administrative in nature, are adopted nearly verbatim from the Washington Clean Air Act (Revised Code of Washington 70.94), and have no direct corollaries in Chapter 173-400 WAC. The second category includes BCAA Regulation 1, sections: 1.02, *Policy and Purpose*; 1.03, *Applicability*; 2.02, *Requirements for Board of Directors Members*; 4.01(A), *Definitions – Fugitive Dust*; 4.02(B), *Particulate Matter Emissions – Fugitive Emissions*; 4.02(C)(1), *Particulate Matter Emissions – Fugitive Dust*; and 4.02(C)(3), *Particulate Matter Emissions – Fugitive Dust*. This second category of BCAA regulations adopt parts of Chapter 173-400 WAC nearly verbatim with minor changes for readability and clarity. The EPA is proposing to determine that these changes are consistent with our prior approvals of Chapter 173-400 WAC and meet Clean Air Act requirements.

III. The EPA’s Proposed Action

A. Regulations to Approve and Incorporate by Reference into the SIP

The EPA proposes to approve and incorporate by reference into the Washington SIP at 40 CFR 52.2470(c) – Table 4, Additional Regulations Approved for the Benton Clean Air Agency (BCAA) Jurisdiction, the BCAA and Ecology regulations listed in the tables below for sources within BCAA’s jurisdiction.

Benton Clean Air Agency (BCAA) Regulations for Proposed Approval			
State/Local	Title/Subject	State/Local	Explanation

Citation		Effective Date	
Regulation 1			
1.01	Name of Agency.	12/11/14	
1.02	Policy and Purpose.	12/11/14	Replaces WAC 173-400-010
1.03	Applicability.	12/11/14	Replaces WAC 173-400-020
4.01(A)	Definitions – Fugitive Dust.	12/11/14	Replaces WAC 173-400-030 (38)
4.01(B)	Definitions – Fugitive Emissions.	12/11/14	Replaces WAC 173-400-030 (39)
4.02(B)	Particulate Matter Emissions – Fugitive Emissions.	12/11/14	Replaces WAC 173-400-040(4)
4.02(C)(1)	Particulate Matter Emissions – Fugitive Dust.	12/11/14	Replaces WAC 173-400-040(9)(a)
4.02(C)(3)	Particulate Matter Emissions – Fugitive Dust.	12/11/14	Replaces WAC 173-400-040(9)(b)

Washington State Department of Ecology Regulations for Proposed Approval

State/Local Citation	Title/Subject	State/Local Effective Date	Explanation
Chapter 173-400 WAC, General Regulations for Air Pollution Sources.			
173-400-030	Definitions.	12/29/12	Except: 173-400-030(38); 173-400-030(39); 173-400-030(91).
173-400-036	Relocation of Portable Sources.	12/29/12	
173-400-040	General Standards for Maximum Emissions.	4/1/11	Except: 173-400-040(2)(c); 173-400-040(2)(d); 173-400-040(3); 173-400-040(4); 173-400-040(5); 173-400-040(7), second paragraph; 173-400-040(9)(a); 173-400-040(9)(b).
173-400-050	Emission Standards for Combustion and Incineration Units.	12/29/12	Except: 173-400-050(2); 173-400-050(4); 173-400-050(5).
173-400-060	Emission Standards for	2/10/05	

	General Process Units.		
173-400-070	Emission Standards for Certain Source Categories.	12/29/12	Except: 173-400-070(7); 173-400-070(8).
173-400-081	Startup and Shutdown.	4/1/11	
173-400-091	Voluntary Limits on Emissions.	4/1/11	
173-400-105	Records, Monitoring and Reporting.	12/29/12	
173-400-110	New Source Review (NSR) for Sources and Portable Sources.	12/29/12	Except: 173-400-110(1)(c)(ii)(C); 173-400-110(1)(e); 173-400-110(2)(d); -- The part of WAC 173-400-110(4)(b)(vi) that says, “not for use with materials containing toxic air pollutants, as listed in chapter 173-460 WAC,”; -- The part of 400-110(4)(e)(iii) that says, “where toxic air pollutants as defined in chapter 173-460 WAC are not emitted”; The part of 400-110(4)(e)(f)(i) that says, “that are not toxic air pollutants listed in chapter 173-460 WAC”; -- The part of 400-110(4)(h)(xviii) that says, “, to the extent that toxic air pollutant gases as defined in chapter 173-460 WAC are not emitted”; -- The part of 400-110(4)(h)(xxxiii) that says, “where no toxic air pollutants as listed under chapter 173-460 WAC are emitted”; -- The part of 400-110(4)(h)(xxxiv) that says, “, or $\leq 1\%$ (by weight) toxic air pollutants as listed in chapter 173-460 WAC”;

			<p>The part of 400-110(4)(h)(xxxv) that says, “or $\leq 1\%$ (by weight) toxic air pollutants”;</p> <p>-- The part of 400-110(4)(h)(xxxvi) that says, “or $\leq 1\%$ (by weight) toxic air pollutants as listed in chapter 173-460 WAC”;</p> <p>400-110(4)(h)(xl), second sentence;</p> <p>--The last row of the table in 173-400-110(5)(b) regarding exemption levels for Toxic Air Pollutants.</p>
173-400-111	Processing Notice of Construction Applications for Sources, Stationary Sources and Portable Sources.	12/29/12	<p>Except:</p> <p>173-400-111(3)(h);</p> <p>-- The part of 173-400-111(8)(a)(v) that says, “and 173-460-040,”;</p> <p>173-400-111(9).</p>
173-400-112	Requirements for New Sources in Nonattainment Areas—Review for Compliance with Regulations.	12/29/12	<p>Except:</p> <p>173-400-112(8).</p>
173-400-113	New Sources in Attainment or Unclassifiable Areas—Review for Compliance with Regulations.	12/29/12	<p>Except:</p> <p>173-400-113(3), second sentence.</p>
173-400-117	Special Protection Requirements for Federal Class I Areas.	12/29/12	<p>Except facilities subject to the applicability provisions of WAC 173-400-700.</p>
173-400-118	Designation of Class I, II, and III Areas.	12/29/12	
173-400-131	Issuance of Emission Reduction Credits.	4/1/11	
173-400-136	Use of Emission Reduction Credits (ERC).	12/29/12	
173-400-151	Retrofit Requirements for Visibility Protection.	2/10/05	
173-400-171	Public Notice and Opportunity for Public Comment.	12/29/12	<p>Except:</p> <p>-- The part of 173-400-171(3)(b) that says, “or any increase in emissions of a toxic air pollutant above the</p>

			acceptable source impact level for that toxic air pollutant as regulated under chapter 173-460 WAC”; 173-400-171(12).
173-400-175	Public Information.	2/10/05	
173-400-200	Creditable Stack Height & Dispersion Techniques.	2/10/05	
173-400-560	General Order of Approval.	12/29/12	Except: -- The part of 173-400-560(1)(f) that says, “173-460 WAC”.
173-400-800	Major Stationary Source and Major Modification in a Nonattainment Area.	4/1/11	
173-400-810	Major Stationary Source and Major Modification Definitions.	12/29/12	
173-400-820	Determining if a New Stationary Source or Modification to a Stationary Source is Subject to these Requirements.	12/29/12	
173-400-830	Permitting Requirements.	12/29/12	
173-400-840	Emission Offset Requirements.	12/29/12	
173-400-850	Actual Emissions Plantwide Applicability Limitation (PAL).	12/29/12	
173-400-860	Public Involvement Procedures.	4/1/11	

B. Regulations to Approve but Not Incorporate by Reference

In addition to the regulations proposed for approval and incorporation by reference above, the EPA reviews and approves state and local clean air agency submissions to ensure they provide adequate enforcement authority and other general authority to implement and enforce the SIP. However, regulations describing such agency enforcement and other general authority are generally not incorporated by reference so as to avoid potential conflict with the EPA’s independent authorities. The EPA has reviewed and is proposing to approve BCAA, Regulation

1, Article 2, *General Provisions*, as having adequate enforcement and other general authority for purposes of implementing and enforcing its SIP, but is not incorporating this section by reference into the SIP codified in 40 CFR 52.2470(c). Instead, the EPA is proposing to include sections 2.01, *Powers and Duties of the Benton Clean Air Agency (BCAA)*; 2.02, *Requirements for Board of Directors Members* (replaces WAC 173-400-220); 2.03, *Powers and Duties of the Board of Directors*; 2.04, *Powers and Duties of the Control Officer*; 2.05, *Severability*; and 2.06, *Confidentiality of Records and Information*, in 40 CFR 52.2470(e), *EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures*, as approved but not incorporated by reference regulatory provisions. Finally, for the reasons discussed above, the EPA is proposing to move WAC 173-400-230, *Regulatory Actions*; WAC 173-400-240, *Criminal Penalties*; WAC 173-400-250, *Appeals*; and WAC 173-400-260, *Conflict of Interest*, currently incorporated by reference in 40 CFR 52.2470(c) – Table 4, to the list of provisions in 40 CFR 52.2470(e) that are approved but not incorporated by reference.

C. Regulations to Remove from the SIP

The regulations contained in Washington’s SIP at 40 CFR 52.2470(c) – Table 4 were last approved by the EPA on June 2, 1995 (60 FR 28726). The EPA is proposing to remove from this table WAC 173-400-010 and 173-400-020 because these provisions will be replaced by the BCAA corollaries 1.02, *Policy and Purpose* and 1.03, *Applicability*, as shown in *Attachment 2* of the SIP revision. We are also proposing to remove WAC 173-400-100, because this outdated provision is no longer part of the EPA-approved SIP for Ecology’s direct jurisdiction under CFR 52.2470(c) – Table 2 and BCAA has requested that it be removed from the BCAA’s jurisdiction under CFR 52.2470(c) – Table 4. For more information please see the EPA’s proposed (79 FR

39351, July 10, 2014) and final (79 FR 59653, October 3, 2014) actions on the general provisions of Chapter 173-400 WAC.

D. Scope of Proposed Action

This proposed revision to the SIP applies specifically to the BCAA jurisdiction incorporated into the SIP at 40 CFR 52.2470(c) – Table 4. As discussed in the EPA’s proposed (79 FR 39351, July 10, 2014) and final (79 FR 59653, October 3, 2014) actions on the general provisions of Chapter 173-400 WAC, jurisdiction is generally defined on a geographic basis (Benton County); however there are exceptions. By statute, BCAA does not have authority for sources under the jurisdiction of the Energy Facilities Site Evaluation Council (EFSEC). See Revised Code of Washington Chapter 80.50. Under the applicability provisions of WAC 173-405-012, WAC 173-410-012, and WAC 173-415-012, BCAA also does not have jurisdiction for kraft pulp mills, sulfite pulping mills, and primary aluminum plants. For these sources, Ecology retains statewide, direct jurisdiction. Ecology also retains statewide, direct jurisdiction for the Prevention of Significant Deterioration (PSD) permitting program. Therefore, the EPA is not approving into 40 CFR 52.2470(c) – Table 4 those provisions of Chapter 173-400 WAC related to the PSD program. Specifically, these provisions are WAC 173-400-116 and WAC 173-400-700 through 750.

As described in the EPA’s April 29, 2015 final action, jurisdiction to implement the visibility permitting program contained in WAC 173-400-117 varies depending on the situation. Ecology retains authority to implement WAC 173-400-117 as it relates to PSD permits (80 FR 23721). However for facilities subject to nonattainment new source review (NNSR) under the applicability provisions of WAC 173-400-800, we are proposing that BCAA would be

responsible for implementing those parts of WAC 173-400-117 as they relate to NNSR permits. See 80 FR 23726.

Lastly, the SIP is not approved to apply in Indian reservations in the State, except for non-trust land within the exterior boundaries of the Puyallup Indian Reservation (also known as the 1873 Survey Area), or any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction.

IV. Incorporation by Reference

In accordance with requirements of 1 CFR 51.5, the EPA is proposing to revise our incorporation by reference of 40 CFR 52.2470(c) – Table 4 “Additional Regulations Approved for the Benton Clean Air Agency (BCAA) Jurisdiction” to reflect the regulations shown in the tables in section III.A. *Regulations to Approve and Incorporate by Reference into the SIP* and the rules proposed for removal from the SIP in section III.C. *Regulations to Remove from the SIP*. The EPA has made, and will continue to make, these documents generally available electronically through www.regulations.gov and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a “significant regulatory action” subject to review by the Office of Management

and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because this action does not involve technical standards; and
- does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because it will not impose substantial direct costs on

tribal governments or preempt tribal law. As discussed above, the SIP is not approved to apply in Indian reservations in the state, except for non-trust land within the exterior boundaries of the Puyallup Indian Reservation (also known as the 1873 Survey Area), or any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: September 2, 2015.

Dennis J. McLerran,
Regional Administrator,
Region 10.

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